IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.609 OF 2007

Mr.Mohammad Rajjak Pathan. ...Applicant.

Versus

The State of Maharashtra ...Respondent.

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Mr.Ayaz Khan, Adv. for the Applicant.
Mr.S.S.Pednekar, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 25th June, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned APP for the State.

2. The applicant is seeking bail in NDPS Spl.Case No.42 of 2006 pertaining to C.R.No.3085 of 2006 of Bhadrakali Police Station, Nashik. The said case is under the NDPS Act.

3. The premises of the applicant consists of two floors. A raid was conducted on the said premises on 19th June, 2006 and 1035 Kgs. of Ganja came to be found on the terrace portion of the said premises. It is an admitted fact that the applicant was not present in the premises at

that time. The case of the applicant is that he had given the terrace portion on rent to one Sachin Choudri. Reliance is also placed by the applicant on the copy of the agreement giving the said terrace portion of the premises on rent to the said Sachin Choudri. It is further stated that the said Sachin Choudri is also involved in another case under the NDPS Act which pertains to Mantala Police Station, Karnataka State. The applicant came to know this fact as the copy of the proclamation issued in respect of said Sachin was sent to the address of the applicant. In the said proclamation also the address of the said Sachin is mentioned as the building of the applicant.

4. No doubt the premises belongs to the wife of the applicant. However, the police after making enquiries in respect of the said rent agreement have recorded the statements of various witnesses including that of Shabana who resides opposite the house of the applicant. Shabana has stated that the top portion of the premises of the applicant was given on rent to some person. I have perused the report tendered by Bhadrakali

police station dated 24th June, 2007 to the above effect. It is pertinent to note that the plan drawn by the prosecution shows that the top portion of the premises of the applicant was accessible by a separate staircase which was outside the premises i.e. the terrace portion was not accessible from inside the premises, but, it was accessible by a separate staircase which was outside the premises. The said fact is also mentioned in the spot panchnama.

5. Looking to all these facts, *prima facie*, it does appear that the applicant was not in conscious possession of the Ganja which was found on the terrace portion of his premises. Hence, there is reasonable ground for believing that the applicant is not connected with the said Ganja. In this view of the matter, the rigours of Section 37 of NDPS Act would not apply to the present case. Hence, I am inclined to grant bail to the applicant.

6. The applicant- Mohammad Rajjak Pathan to be released on bail in the sum of Rs.50,000/- with one or two sureties to make up the said amount.

The applicant shall report to Bhadrakali Police Station, Nashik once in 15 days, till conclusion of the trial.

7. The observations made in this order shall not influence the trial Court in any manner while deciding the trial.

8. Application is disposed of accordingly.

(SMT.V.K.TAHILRAMANI,J.)